

R.Anbazhagan vs 4 Mrs.M.Vijaya on 17 April, 2008

Chennai High Court

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.04.2008

C O R A M

The Honourable Mrs. Justice PRABHA SRIDEVAN

W.P.No.47897 of 2006

1 R.ANBAZHAGAN
DEPUTY MANAGER(MECHANICAL) TAMILNADU
NEWSPRINT AND PAPERS LTD(TNPL) KAGITHAPURAM
PUGALUR KARUR DISTRICT
[PETITIONER]

Vs

- 1 THE STATE INFORMATION
COMMISSION 89 DR ALAGAPPA ROAD KRISHNA
VILAS PURASAWAKKAM CHENNAI 84
- 2 THE MANAGING DIRECTOR
TAMILNADU NEWSPRINT AND PAPERS LTD(TNPL)
ANNA SALAI GUINDY CHENNAI 32
- 3 THE CHIEF MANAGER
TAMILNADU NEWSPRINT AND PAPERS LTD (TNPL)
KAGITHAPURAM PUGALUR KARUR DISTRICT 639 136
- 4 MRS.M.VIJAYA
W/O N.RAJENDRAN 53/1 MAIN ROAD POTHANUR
NAMAKKAL DISTRICT
[RESPONDENTS]

Prayer: Petitions filed under Article 226 of the Constitution of India praying for a writ of certiorari to call for the records of the 1st respondent made in Appeal case No.5795/tnic/06 dated 13.11.2006 in so far as it directs the respondents 2 and 3 to provide specific information to all the queries

immediately regarding the salary particulars of the petitioner and quash the same.

For petitioner :: Mr. S. Silambanan, Senior Counsel
For respondents :: No appearance for R1
Mr. Shivakumar for RR2 &3

ORDER

The petitioner was working as the Deputy Manager in Tamil Nadu Newsprint and Papers Limited(TNPL) at the time of filing of the writ petition. It is informed that subsequently he has resigned. The fourth respondent made an application to the Public Information Officer of TNPL seeking information under the Right to Information Act ("the Act" in short) regarding the details of the petitioner's annual gross income. The fourth respondent had not given any reasons for this request. The Chief Manager, Human Resources of TNPL by his letter dated 19-10-2006 declined to give the information on the ground that it is of a personal nature and that it would not be revealed to a third person without the authorisation of the concerned employee. The letter also informed the fourth respondent that TNPL was not bound by the provisions of the Act. Aggrieved by this, the fourth respondent filed an appeal under Section 19 of the Act. The first respondent-Commission passed the impugned order on 13-11-2006 holding that "All Government Public Sector Undertakings come under the purview of the Act as per Section 2(h)(d)(i) of the Right to Information Act, 2005. Specific information must be given to all the queries immediately and reported to the Commission." The petitioner is aggrieved that without any discussion or consideration of the fact that this information is personal in nature, the impugned order has been passed. Therefore, this writ petition has been filed to quash the said order insofar as it directs the respondents 2 and 3 to provide the information to all the queries raised by the fourth respondent.

2. The learned Senior Counsel, Mr. Silambanan appearing for the writ petitioner submitted that as per Section 8 of the Act, information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of a person shall not be given, unless the authority is satisfied that larger public interest justifies the disclosure of such information. According to the learned Senior counsel, the impugned order does not indicate that the first respondent was satisfied that larger public interest prevailed over the provisions of Section 8 of the

Act which protected disclosure of personal information. The learned Senior Counsel also submitted that TNPL is not a public authority as defined by Section 2(h) of the Act.

3. Counter has been filed by the respondents 2 and 3. The learned counsel for respondents 2 and 3 would submit that the Government of Tamil Nadu holds only 35.10% of the total equity capital and therefore, the TNPL is not a "public authority" and that the details relating to the gross annual income are kept confidential and that the motive for the fourth respondent to seek this information is not clear and that there is no merit in the request made by the fourth respondent. The learned counsel however, would submit that the TNPL would abide by the directions of this Court.

4. The fourth respondent has filed a vacate stay petition and as per the affidavit filed in support thereof, it is seen that earlier the fourth respondent had challenged the selection of the petitioner's wife for allotment of LPG distributorship. The allotment of this distributorship gave rise to W.P.No.18544 of 2006 which was dismissed by this Court on merits. Subsequently, the fourth respondent made an application to the third respondent to give details regarding the annual gross income of the petitioner. According to the fourth respondent this would prove that the petitioner's wife did not satisfy the eligibility criteria for allotment of distributor and that the allotment is illegal. The learned counsel submitted that Section 8 of the Act relates to other information which are personal in nature, the disclosure of which would amount to invasion into the privacy, but details regarding the income of the petitioner received from a public authority cannot be said to be information of a personal nature. The learned counsel submitted that as per Section 4(1)(b) of the Act, TNPL should have published within 120 days from the enactment of this Act, the details regarding the emoluments of its employees. The learned counsel also submitted that the stand of respondents 2 and 3 that the TNPL is not a public authority cannot be accepted.

The Memorandum and Articles of Association of TNPL, shows that the subscribers to the Memorandum of Association are nine including His Excellency the Governor and eight other persons who barring one from Government service. The following are the first Directors of the Company:

1. Thiru C.V.R. Panikar, I.A.S.
Vigilance Commissioner
Government of Tamil Nadu
Madras □ 600 009
2. Thiru. K. Diraviam, I.A.S.,
Commissioner and Secretary to Government, Food Dept.,
Government of Tamil nadu

- Madras □ 600 009
3. Thiru. K. Venkatesan, I.A.S.,
Secretary to Government
Finance Department
Government of Tamil Nadu
Madras □ 600 009
 4. Thiru.S. Viswanathan
Managing Director
Seshasayee Paper and Boards Ltd.,
Madras □ 600 034
 5. Thiru. K.P. Geethakrishnan, I.A.S.,
Commissioner and Secretary to Government
Industries Department
Government of Tamil Nadu
Madras □ 600 009"

As per Article 97, the part-time Chairman is appointed by the State Government with the consent of Corporations mentioned in Article 99(b). These Corporations are all public sector undertakings. Article 99 which relates to Additional Directors, entitles the State Government so long as they hold the share capital to appoint from time to time as a Director either whole time or part time persons and also remove from such office any person or persons so appointed. These nominated directors cannot be removed otherwise. The fees of the nominee directors accrue to the State Government and will be paid by the Company directly to the State Government. The learned counsel for the respondents 2 and 3 submitted that even as on date the Company is not holding the majority of the shares and would not come under the definition of public authority. The definition of public authority reads as follows:

"public authority" means any authority or body or institution of self-government established or constituted --

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate

Government, and includes any --

(i) body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government;" So it is not necessary that the Government should be the majority shareholder of the public authority. The body or institution should be substantially financed by the Government and there should be control by the Government. The definition is inclusive.

5. In this case the Memorandum of Association indicates the control that the State has over TNPL and therefore, TNPL would definitely

come under the definition of 'public authority' as per the Act. In *Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Assn.*, ((2002) 2 SCC 167) the Supreme Court dealt with the status of the appellant Company and concluded that it was an instrumentality and agency of the State Government. This decision has been referred to as representing "the continuity of thought commencing from the decision in *Rajasthan Electricity Board* in 1967 upto the present time." (vide 2002 (5) SCC 111(*Pradeep Kumar Biswas V. Indian Institute of Chemical Biology & Others*)). Many of the salient features of the appellant company noted in *Mysore Paper Mills* case are found in *TNPL* too. Therefore, it is clear that *TNPL* is a "public authority" as defined in the Act.

6. The next objection is with relation to the nature of information sought for. Section 4 of the Act deals with the obligation of the public authority to do the following:

"(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.

..(b) publish within one hundred and twenty days from the enactment of this Act,--

(i) ..

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(ix)...

(xvi) the names, designations and other particulars of the Public Information Officers;"

Sub-section (2) provides that the public authority should endeavour constantly to provide this information suo motu at regular intervals through various means of communications including the internet.

Subsection (3) provides that every information should be disseminated widely and in such form and manner which is easily accessible to the public. Subsection (4) provides dissemination of information by taking into consideration the local language and cost effective method of communication.

7. Section 8 of the Act reads as follows:

"Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

(a) ...

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

It is clear therefore, that TNPL was under a statutory obligation to make available, inter alia on the internet, the information relating to the monthly remuneration received by each of the officers and employees including the system of compensation as provided in its Regulations. It is obvious that TNPL has not done so. In fact, it is not necessary for any person to seek this information if TNPL had discharged its obligation under Section 4. The information would have been available on the internet to any person who is interested.

8. As regards the objection that it is a personal information which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of a person, this deserves to be rejected. The petitioner receives his salary from a public sector undertaking and as stated in the counter filed by the respondents 2 and 3 it is subject to the provisions of Income Tax. Therefore, there is nothing secret about the income received by him. Further it also cannot be stated that the disclosure has no relationship to any public activity or interest. The case of the fourth respondent is, if this information is disclosed it would show that the petitioner's wife would not satisfy one of the criteria subject to which the LPG distributorship is allotted. This allotment of distributorship cannot be arbitrary and contrary to rules and if there is some factor which would vitiate the selection process, then it would definitely be a matter of public interest. In any event, the income received by an individual from a public sector undertaking cannot be private information. Information relating for example as to whether a particular person is tested HIV positive might be a matter which intrudes into the privacy of the individual, but not the monthly income which a person is receiving from a public sector undertaking which is subject to income tax.

9. The other objection raised is that, as on date the writ petitioner has resigned from TNPL and therefore, the information that is now sought for would not be the information relating to an employee, but an erstwhile employee. This objection cannot be entertained because the petitioner was an employee of TNPL when he filed the writ petition. He obtained stay. During the currency of stay, pending the writ petition, he resigned and he cannot now take advantage of that fact. The matter will

have to be dealt with according to the status of the petitioner on the date of application and on the date of the impugned order. The decision to allot the distributorship will be tested according to the circumstances that prevailed on the date of decision.

10. One other ground raised by the respondents 2 and 3 to withhold information is that the fourth respondent has not given reasons for seeking the information. But as per Section 6(2), the applicant need not give reasons. Section 6(2) reads thus:

"(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him."

11. The scope of Right to Information vis-a-vis the right to privacy has been discussed in 2006 (5) CTC 829 (Doraisamy, K.J. Vs. The Assistant General Manager, State Bank of India, Erode Branch). The relevant paragraphs are extracted herein:

"14. R. Rajagopal V. State of Tamil Nadu, 1994 (6) SCC 632 is a turning point in the history of the development of the law of privacy in India.

...
"9. The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin □ (1) the general law of privacy which affords a tort action for damages resulting from an unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising □ or non-advertising □ purposes or for that matter, his life story is written □ whether laudatory or otherwise □ and published without his consent as explained hereafter. In recent times, however, this right has acquired a constitutional status. We shall proceed to explain how? Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21."

15. After an elaborate discussion of the American, Australian and English Case Law, the Supreme Court summarised the principles flowing from the discussion, in paragraph 26 as follows:

"26. We may now summarise the broad principles flowing from the above discussion:

..
(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including Court records. This

is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

..

31. Lastly, with the advent of the Right to Information Act, 2005, the Bank has become obliged to disclose information to the public. Section 3 of the said Act entitles all citizens to a right to information. Section 4(2) of the said Act provides as follows:

"(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information."

Public Authority is defined under Section 2(h) of the Act to include "any body owned, controlled or substantially financed." Therefore, the respondent Bank is a Public Authority within the meaning of the Act and they owe a duty to disseminate information even suo moto.

Certain exemptions are listed out under Section 8 of the Right to Information Act, 2005, two of which are of significance and they read as follows:

..

..

Thus the aforesaid decision leaves no room for any doubt that the 'Right to Privacy' fades out in front of the 'Right to Information' and 'larger public interest'.

12. In *Surupsingh Vs. State of Maharashtra* (2007 (4) Mh.L.J.)573), the Division Bench of the Bombay High Court, in a case where the hospital records of a convict was sought, held thus:

"15. The question then is what is the true import of the proviso, which sets out that the information which cannot be denied to Parliament or a State Legislature shall not be denied to any person. Are the medical records maintained of a patient in a public hospital covered by the provisions of the Act. Can this information be withheld to either Parliament or State Legislature as the case may be on the ground that such information is confidential. To our mind generally such information normally cannot be denied to Parliament or the State Legislature unless the person who opposes the release of the information makes out a case

that such information is not available to Parliament or the State Legislature under the Act. By its very constitution and the plenary powers which the Legislature enjoys, such information cannot be denied to Parliament or State Legislature by any public authority. As the preamble notes, the Act is to provide for setting out a practical regime of right to information for citizens, to secure access to information under the control of public authorities as also to promote transparency and accountability in the working of every public authority. These objects of the legislature are to make our society more open and public authorities more accountable. Normally, therefore, all such information must be made readily available to a citizen subject to right of privacy and that information having no relationship to any public authority or entity. In the instant case the respondent No.2 while granting the application of respondent No.5, has given as reasons larger public interest and as that the information could not be withheld from Parliament or State Legislature. The learned Associate Advocate General informed us that the State Assembly has not framed any Rules in the matter of receiving information.

The test always in such matter is between private rights of a citizen and the right of third person to be informed. The third person need not give any reason for his information. Considering that, we must hold that the object of the Act, leans in favour of making available the records in the custody or control of the public authorities. "

13. One of the objectives to this right to information is eradication of ineffective governance and corrupt governance. Corruption is now recognised as violation of human rights. Good transparency practices are essential for good governance and it includes maximum disclosure; obligation to publish; promotion of open government; limited scope of exceptions; minimum costs; processes that facilitate access; open meetings; precedence of disclosure; and protection of whistle-blowers. The civil society must be unrelenting in its efforts to ensure that the government at all levels reaches a reasonable standard in affording public information to the citizens. Sometimes even harmless information is not made available. When what is asked for is just ordinary data, data that any interested tax-paying citizen has a right to know - a human right, even where no national secrets that threaten public interest are asked for - it is not furnished. This access to information is more vitally important in developing countries. It is very necessary that the ordinary person is enabled to participate in the processes that affect daily life and he has empowered with the information to play an effective role in policy-making and legislative decision-making. To promote broader political participation, there should be accountability and transparency of government, to prevent the criminalisation of policy, there should be free flow of information. These are the reasons why the Act came into force. The Government

should have the will to make the shift from being niggardly in providing access to information. Transparency is essential for a healthy democracy and robust economy. The first respondent was right in directing that the information should be given

14. In these circumstances, I do not think the impugned order deserves to be quashed. The respondents 2 and 3 shall give the information as they are required to under the Act within a period of fifteen days from the date of receipt of a copy of this order. The writ petition is dismissed. However there will be no order as to costs. M.P.Nos.1 and 2 of 2006 are also dismissed.

glp

To

- 1 THE STATE INFORMATION
COMMISSION 89 DR ALAGAPPA ROAD KRISHNA
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- 2 THE MANAGING DIRECTOR
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